

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OTIS A. DANIEL,

Plaintiff,

-v-

T&M PROTECTION RESOURCES LLC, et al.,

Defendants.

13 Civ. 4384 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

On March 10, 2020, *pro se* plaintiff Otis Daniel filed a complaint against defendants Robert S. Tucker, Esq., and Steven I. Gutstein in Case No. 20 Civ. 2149, before the Hon. Louis L. Stanton. On April 24, 2020, Judge Stanton issued an order, which construed Daniel's complaint as a request for relief under Federal Rule of Civil Procedure 60(b) from this Court's July 19, 2018 opinion. *See* No. 20 Civ. 2149 (LLS), Dkt. 4. The July 19, 2018 opinion awarded judgment to defendant T&M Protection Resources LLC and was later affirmed by the Second Circuit. *See* Dkt. 185 (July 19, 2018 opinion); Dkt. 208 (Second Circuit mandate).¹ Judge Stanton denied Daniel relief under Rule 60(b) and dismissed his remaining claims against Tucker and Gutstein under the doctrine of claim preclusion. *See* No. 20 Civ. 2149 (LLS), Dkt. 4.

The Court recently became aware that on July 10, 2020, Daniel filed the attached motion seeking an extension of time to file a notice of appeal for Judge's Stanton's April 24, 2020 order. *See* No. 20 Civ. 2149 (LLS), Dkt. 7. To his request for an extension to appeal, Daniel attached a July 9, 2020 order from this Court, Dkt. 215, which denied a request from Daniel to vacate the

¹ Unless otherwise indicated, docket numbers refer to the docket of this case, No. 13 Civ. 4384 (PAE).

decision and judgment of this Court. *See* No. 20 Civ. 2149 (LLS), Dkt. 7 at 3–4. In light of Daniel’s *pro se* status, the Court construes Daniel’s motion liberally as a notice of appeal of this Court’s July 9, 2020 order at Dkt. 215. Daniel’s notice of appeal is timely as to that order. If Daniel does not wish to appeal this Court’s July 9, 2020 order, he is to file a letter, addressed to this Court, which indicates his intent to withdraw the notice of appeal.

The Clerk of Court is respectfully directed to transmit this order and the attached notice of appeal to the Second Circuit, and to mail a copy of this order to Daniel.

SO ORDERED.


PAUL A. ENGELMAYER
United States District Judge

Dated: July 14, 2020
New York, New York

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OIS A. DANIE

(List the full name(s) of the plaintiff(s)/petitioner(s).)

-against-

Robert Tucker, Street
Gutierrez

(List the full name(s) of the defendant(s)/respondent(s).)

20 CV 2149 (US) ()

**MOTION FOR EXTENSION
OF TIME TO FILE NOTICE
OF APPEAL**

I move under Rule 4(a)(5) of the Federal Rules of Appellate Procedure for an extension of time to file a notice of appeal in this action. I would like to appeal the judgment

entered in this action on 4/24/20 but did not file a notice of appeal within the required time period because:

time period because.

I THOUGHT MY PRIOR APPEAL COULD HAVE BEEN RE-OPENED OR THE DISTRICT COURT'S (Judge Engelmaier) 7/19/18 ORDER VACATED
(Explain here the excusable neglect or good cause that led to your failure to file a timely notice of appeal.)
I RECEIVED THIS COURT'S JUDGMENT IN MAY 2020

Dated:

Signature

Name (Last, First, MI)

P-O BOX 1281 AL4
Address _____ City _____

ALY
State

10150
Zip Code

97-92

E-mail Address (if available)

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United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

ROBERT A. KATZMANN
CHIEF JUDGE

Date: July 02, 2020
Docket #: 18-2351cv
Short Title: Daniel v. T&M Protection Resources, LLC

CATHERINE O'HAGAN WOLFE
CLERK OF COURT

DC Docket #: 13-cv-4384
DC Court: SDNY (NEW YORK
CITY)
DC Judge: Engelmayer
DC Judge: Pitman

NOTICE OF NON-JURISDICTION

This is to acknowledge receipt of papers dated 07/01/2020, in the case referenced above. Because this case was mandated on 08/23/2019, this Court no longer has jurisdiction to entertain your request. For this reason, your papers are returned unfiled.

Inquiries regarding this case may be directed to 212-857-8560.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OTIS A. DANIEL,

Plaintiff,

-v-

T&M PROTECTION RESOURCES LLC, et al.,

Defendants.

13 Civ. 4384 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has received two filings from *pro se* plaintiff Otis Daniel. The first is a letter alleging that his pro bono attorneys acted unethically and committed malpractice in representing him. Dkt. 213. It is unclear what relief Daniel seeks with this letter. In any event, having reviewed Daniel's letter in detail, the Court is unaware of any evidence or indication of malpractice. Quite the contrary: Having presided over Daniel's case including trial, the Court's assessment is that Daniel's counsel were uncommonly vigorous, dedicated, and effective.

Daniel has also submitted a motion to vacate the decision and judgment in this case. Dkt. 214. In support, Daniel cites his July 25, 2018 motion for reconsideration, Dkt. 193, and to the above letter complaining of misconduct by his counsel, Dkt. 213, in addition to the complaints, his deposition testimony, and the trial transcript. Daniel also recently filed a motion for relief under Federal Rule of Civil Procedure 60(b). Dkt. 212. The Court, however, again finds no reason to vacate the decisions or judgment in this case, and denies this motion, for the reasons stated in its July 27, 2018 denial of Daniel's motion for reconsideration, Dkt. 195, and its June 22, 2020 denial of Daniel's Rule 60(b) motion, Dkt. 212.

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The Clerk of Court is respectfully directed to mail a copy of this order to Daniel. For avoidance of doubt, this case remains closed.

SO ORDERED.


PAUL A. ENGELMAYER
United States District Judge

Dated: July 9, 2020
New York, New York